Province of British Columbia

CONFLICT OF INTEREST COMMISSIONER

The Honourable H.A.D. OLIVER, Q.C.

ANNUAL REPORT

2001

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BRITISH COLUMBIA

July 21, 2003

The Honourable Claude Richmond, MLA
Speaker of the Legislative Assembly
of British Columbia
Room 207, Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Mr. Speaker:

I have the honour to present to you the Annual Report of the Office of the Conflict of Interest Commissioner for the period January 1, 2001 to December 31, 2001.

This report is submitted pursuant to section 15 of the *Members' Conflict of Interest Act*, Chapter 287 of the Revised Statutes of British Columbia.

Yours sincerely,

H. A. D. Oliver
Commissioner

Office of the Conflict of Interest Commissioner

The Honourable H. A. D. Oliver, Q.C.
Commissioner

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TABLE OF CONTENTS

	Page
Introduction	1
The Commissioner's Responsibility	2
The Members' Responsibility	3
Legislative Ethics	4
Our Own Integrity	4
A Common Factor	5
Conflict of Interest and the Awarding of Contracts	7
Changes to Disclosure Statements	7
Beyond Our Act	8
Public Education and Outreach	10
Investigations and the Media	10
Revisions to the *Members' Conflict of Interest Act*	12
Financial Summary	12
Selected Case Summaries	12
Office Operations	16
Conclusion	16
Appendix I	

Annual Report

OF THE CONFLICT OF INTEREST COMMISSIONER

2001

Introduction

This Ninth Annual Report of the Commissioner of Conflict of Interest (an independent Officer of the Legislative Assembly) covers the period of January 1, 2001, to December 31, 2001. Its completion was delayed in the hope of including a report on the Commissioner's findings in an ongoing Inquiry into the conduct of a Member of the Legislative Assembly, however that Member's conduct having become the subject matter of proceedings in the Supreme Court of British Columbia, it was thought inappropriate to publish the Commissioner's report until after the conclusion of the Supreme Court proceedings.

The question of how to address the problem of concurrent proceedings in a Commissioner's Inquiry and in a criminal prosecution before the courts is one which must in due course be addressed, for on the one hand the Legislative Assembly and the people of this Province are entitled to learn at the earliest possible moment the findings of the Conflict of Interest Commissioner in an Inquiry into the conduct of a senior minister; and on the other hand, nothing must be done to jeopardize the right to a fair and unprejudiced trial of any person, be he a cabinet minister or the most humble person in the land.

The Commissioner's Responsibility

The Conflict of Interest Commissioner has been described as the "guardian of the integrity" of Members of the Legislative Assembly of British Columbia. If this description is accurate, it is a sometimes complex and difficult task, which requires the unremitting assistance of the Members themselves. My efforts are greatly facilitated when Members of the Legislative Assembly question their own principles and bring to the Commissioner's attention any issue of concern they may have. Members have come to realize that this can obviate the necessity for the public or the media to bring problems to my office.

It is not the function of the Commissioner to act as policeman or investigator of Members of the Legislative Assembly without an official complaint having first been formally filed. Unfortunately, there is wide-spread misunderstanding of the limits placed on the Commissioner's role, as is evidenced by the calls and e-mails to our office. For example, a member of the public may call simply to tell us that a Member of the Legislative Assembly might be in a conflict of interest, although they have no evidence with which to prove their accusation. They feel that "throwing us a bone" will cause an immediate investigation of vague and unsubstantiated queries which are unrelated to "conflict of interest" as defined in the *Members' Conflict of Interest Act.*

Beyond this, it is left to the general public and Members themselves to file a formal complaint with this office, detailing the contravention of the Act that they believe may have been transgressed. Then, and only then, can the Commissioner begin an investigation or an inquiry and offer an opinion.

As Commissioner, it is also my duty to require that Members provide me with the financial information necessary to meet the provisions of Section 16 of the *Members' Conflict of Interest Act*. This information arrives in the form of Confidential Disclosure Statements and Material Change Forms. Members of the Legislative Assembly must comply with this requirement annually, as well as informing me of any changes that may occur during the year.

The Members' Responsibility

Members of the Legislative Assembly are acutely aware of the public perception they may evoke in the execution of their duties, and will call or contact this office on their own, to as one Member put it, "run something up the flagpole."

Members realize the importance of scrutinizing their own conduct carefully, rather than waiting for a Member of the Opposition, a member of the public or a member of the media to do it for them. Members are expected to familiarize themselves with the *Members' Conflict of Interest Act* and to act with the integrity and prudence that their role as an Honorable Member demands. Members understand how essential it is that they be clearly seen to conduct themselves in accordance not only with the letter of the *Members' Conflict of Interest Act,* but also with its spirit.

As always, we invite Members of the Legislative Assembly to avail themselves of the accessibility of the Commissioner for consultation and advice, seven days a week, at all hours. I do urge Members to make use of this service in a timely fashion. Not infrequently I have received requests wished upon me at the last possible moment, where an immediate and hasty decision is demanded. For example, Members will send me a note outlining an invitation to attend a function outside of our province. Unfortunately that note may arrive at 10 p.m. on Friday night, with the flight due to leave at 8 a.m. on Monday, and may attach a copy of some previous decision I have made in vaguely similar circumstances, with the comment that "as you didn't have a problem with a previous request, I assume that this will also be agreeable." Similar or not, I am required to look at the facts of each and every individual request, and would prefer that Members give our office reasonable time to make inquiries and to ensure that Members will not be involved in an unforeseen breach of the statute. Though I realize that last-minute requests may on rare occasions be unavoidable, I would welcome it as a rule that they not be made by Members with boarding pass in hand.

Legislative Ethics

When a private citizen is elected as a Member of the Legislative Assembly of British Columbia, he assumes a second identity, more demanding and restrictive than the general moral obligations of private life. He or she may be held to standards which, if enforced against private citizens, would violate their rights to privacy. Members of the Legislative Assembly must make the most sweeping disclosures about their personal financial affairs and those of close family members.

They must answer with complete truth and frankness the searching inquiries of the Conflict of Interest Commissioner.

Their every action, their every word, is subject to scrutiny by the public, the Opposition and the media.

They are regarded as fundamentally different from ordinary citizens, who regard them as an elite, and expect of them a higher, exemplary standard of conduct.

Members generally do their utmost to achieve this standard, but in the course of doing so are confronted frequently with problems which the private citizen does not normally have to face.

It is to assist members in navigating these dangerous shoal waters that the Conflict of Interest Commissioner's Office exists.

Our Own Integrity

The Conflict of Interest Commissioner's Office receives calls from all areas of the public and private sector, that cover a vast number of "conflict" issues. Many callers have what on the surface appear to be valid concerns about their provincially elected officials, although they

are hesitant to actually move forward with a formal complaint. Once the caller has reviewed the statutory provisions for making a formal complaint, he or she may decide to go no further.

I do not in any way encourage or discourage formal complaints against Members of the Legislative Assembly, and leave it to callers to decide whether they wish to proceed.

These calls often come from unidentified persons and relate to named or unnamed Members, "bureaucrats," municipal officials and non-profit organizational leaders, in a multitude of public and private sector areas.

Consequently, the Conflict of Interest Commissioner's Office is privy to a disproportionate amount of sensitive information about an assortment of public figures and private citizens that may or may not have substance. We treat this information with the greatest of respect, cognizant of the fact that if indeed we guard the integrity of others, we must similarly guard our own.

A Common Factor

Frequently the Conflict of Interest Commissioner's Office receives calls or letters about a Minister who the caller feels is, or may be, in a "conflict of interest" due to what appears to be a too-close relationship with a specific issue. To take a hypothetical example, a Minister who was once the owner of a recycling enterprise may now be Minister of Environment. Some of our callers feel that because of this particular Minister's experience and history in the workplace, he must be in a position of conflict. He has been on the "environmental task force" for years and has many friends, some very good friends, within that particular milieu. These friends and business contacts may have contributed to the Minister's campaign for election or re-election. Therefore, there can be a perception that if the Minister has rubbed elbows, socialized, campaigned with or worked alongside those in the environmental arena,

the Minister would instinctively gravitate towards these individuals when awarding contracts or making decisions on behalf of the Ministry of Environment.

What the callers rarely seem to ask themselves is: who better to put in charge of bakeries than a baker? We hire individual employees because they have experience in what it is we are asking them to do. This undoubtedly is one of the factors that the Premier would consider in selecting ministerial appointees.

Each portfolio is normally examined carefully by the Commissioner with the Minister, at the outset of their initial private disclosure meeting. The Commissioner asks the Minister if she or he feels there may be any conflict of interest in taking on the portfolio (always bearing in mind that a conflict may not become evident until well after the Minister has been appointed and an issue occurs.) If the Minister or the Commissioner has any concerns, they are addressed immediately at the initial meeting and advice is given on how to proceed. In some cases, it may be suggested that Ministers or a Committee Member step aside when sitting on specific committees that may be of potential conflict. A procedure is set up within our office to accommodate this action.

The practice of meeting with new Ministers is one that perhaps is not addressed as regularly as I would like it to be. I believe that every prospective Minister should invariably, prior to acceptance of appointment, meet with the Commissioner. This applies also after a cabinet shuffle. It would provide a measure of assurance to the public. Ministers, in turn, would have the satisfaction of knowing that they have addressed any latent issues.

I always try to remind callers that it is entirely the prerogative of the Premier of the Province to determine who he feels would be best suited to what portfolio.

Conflict of Interest and the Awarding of Contracts

We continue to receive inquiries regarding the awarding of government contracts. I feel it is important to let the reader know here that there are firm guidelines in place for the solicitation and selection process for government contracts. Ministries must follow these guidelines when soliciting and awarding contracts, thus reducing any probability of an apparent conflict of interest. These guidelines are available on-line at http://www.fin.gov.bc.ca/ocg/fmb/manuals/CPM/06_Procurement.htm

This document (Core Policy Manual - Procurement) contains the government's policies and guidelines that govern relationships between contractors and the government. It lays out ground rules to ensure that fair, open and equitable contracting practices are followed, while enabling government's need for best-value return on money spent.

Changes to Disclosure Statements

Members of the Legislative Assembly of British Columbia have for some time been troubled about the unwieldiness of the Disclosure Statements and the Material Change Forms, and have expressed concerns about Blind Trust Agreements. These three specific items, Disclosure, Material Change and Blind Trust, have been discussed and reviewed on an ongoing basis by the Commissioner and staff. No firm changes can be made without changing the legislation that governs the forms. Our forms, in effect, are our regulations.

When the disclosure statements were originally developed, the requirement for financial disclosure covered a broad scope. More information was deemed better than less.

Now, several years down the road, we have discovered that while there remains a need for Members to disclose all financial information, we do not require the volume of information that was initially requested. It has become apparent that we should focus on investments and

assets that the Member controls, rather than investments and assets controlled by arm's-length organizations or institutions. I refer specifically to self-directed and non-self-directed investments. Non-self directed investments are investments administered by a financial institution over which the Member has no control. These include RRSPs and mutual funds, where investment, sale and re-investment of funds takes place without input by or influence of the investor. Self-directed investments are described as investments that are directly administered by (1) the Member and (2) a trustee, with whom the Member or family member deposits contributions and who invests this money in securities at the Member's direction. For obvious reasons, it is these investments that must be disclosed and scrutinized.

In our continuing review of the forms, we have discovered that our Members are in good company, as the same level of irritation is felt by Members of Legislative Assemblies in other provinces about their own disclosure forms. It is important to note that Members do not have a problem with the concept of sharing of their information, but simply with the unwieldiness and lack of clarity of the forms we provide for the purpose.

In summary, questions surrounding financial disclosure must be asked, and the information must be provided as required by statute. We continually ask ourselves if there is a better way of requesting and fulfilling the legislative requirement to get this information.

Beyond Our Act

On an ever-growing and regular basis, our office receives calls and e-mails from the general public inquiring whether their local municipal politician or a specific ministerial bureaucrat, the leader of a non-profit organization or simply a neighbour is covered by our legislation. While our legislation has certainly gone a long way towards alleviating a significant amount of distrust of legislative politicians, in general there continues to be an instinct of mistrust at the community level of those engaged in public service. I suspect that the complaints regarding the above will continue to increase in our office, rather than decrease.

Our mandate is quite simple. The *Members' Conflict of Interest Act* describes it unambiguously:

Conflict of Interest

2 (1) For the purposes of this Act, a member (Member of the Legislative Assembly of British Columbia) has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.

(2) For the purposes of this Act, a member (Member of the Legislative Assembly of British Columbia) has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

The "apparent conflict" prohibition is peculiar to British Columbia and elevates our integrity target beyond that existing in many jurisdictions. As our own legislation only covers Members of the Legislative Assembly (including Members of Cabinet), we advise callers as to what we require of our Members. There appear to be no present plans to broaden the scope of our Act to include anyone other than Members of the Legislative Assembly.

Public Education and Outreach

Website

As indicated in my previous report, we have now completed the development of a website for the Conflict of Interest Commissioner's Office. We continue to review the website and its information. Judging from the feedback we've received, it has proven to be very useful, educational and informative.

Handbook

The handbook is near completion. Budget constraints prohibited us from printing the handbook during this fiscal year: the delay has allowed us to include more information. As we want this handbook to be a useful reference tool for both Members and the general public, we will continue to work to expand on it prior to printing and as information presents itself.

The handbook should serve as yet another device which Members and the public alike can use to familiarize themselves with the Office of the Conflict of Interest Commissioner, its mandate and the *Members' Conflict of Interest Act.*

Investigations and The Media

When does an investigation by the Conflict of Interest Commissioner commence? There have been many inquiries in recent months surrounding the term "investigation." I use the term reluctantly, as it conjures up in the minds of some an image of the existence of a measure of guilt to be investigated. No matter how hard we try, there will always be a reporter somewhere who will convey in their daily newspaper that the local MLA is now "under investigation" to an audience which inevitably will include some who will wisely shake their heads, intoning that "there's no smoke without fire."

On the fiscal side, any investigation is costly in terms of financial cost and of staff hours.

On the political side, as long as there is an "investigation" hanging over a politician's head, regardless of which side of the Chamber they sit on, they must wear the insinuation, whether the charges are founded or not and the Opposition is happy to ensure that the public not forget the insinuation.

This terminology could damage an otherwise stellar political career.

We receive many "complaints" in the Conflict of Interest Commissioner's Office, and numbers of these do not have substantial merit. But we must determine this and this takes time. In some cases, a lot of time. In others, it can be wrapped up with a simple telephone call.

Research must be done to ascertain:

1) whether the complaint has merit; and
2) if it can be substantiated.

This stage of our process is called a Preliminary Assessment. This is normally a speedy procedure at the end of which it can be determined whether:

1) a complaint should be dismissed as unwarranted; or
2) an investigation should take place.

When an investigation proceeds, it can be determined during its course whether the seriousness of the matter and the available evidence are such as to necessitate a formal Inquiry.

A formal Inquiry is a slow, burdensome, and costly process only to be embarked upon when the public interest demands it.

If the allegations are grave and truth cannot properly be arrived at by less costly means, then Commission Counsel is instructed, court reporters are employed, a Hearing Room is obtained, and the Inquiry proceeds in accordance with the statute.

Revisions to The Members' Conflict of Interest Act

For some time now, the *Members' Conflict of Interest Act* has been in need of modification. In 1999, the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills of the 36th Parliament reviewed the *Members' Conflict of Interest Act* and made many recommendations. During the period covered by this report, few have been adopted. This report is available online at http://www.legis.gov.bc.ca/cmt/36thparl/cmt13/report991206.htm

Financial Summary

Budget	Expenditure	Balance
$313,502.00[1]	$296,382.63	$17,119.37
$314,000.00[2]	$117,296.60	$196,703.40

It will be seen that we continue to husband our resources with frugality.

Selected Case Summaries

The following is a very brief outline of selected issues brought forward by Members of the Legislative Assembly. It is intended to reflect the very broad range of queries we receive. However, it does not reflect the actual number of issues we have reviewed.

[1] Budget figures for the fiscal year of April 2000 through March 2001
[2] Budget figures for period of March 2001 through December 2001

Issue 1: A Member questioned having to include his ex-spouse in his disclosure statement.

Opinion: The Commissioner was of the view that at the present time, the Member was not possessed of a spouse within the meaning of the *Members' Conflict of Interest Act* and that the ex-spouse's assets, liabilities or sources of income were now of no consequence and would not need to be included in the Member's Disclosure Statement.

Issue 2: A Member wished to use his campaign office as a new constituency office.

Opinion: The Commissioner felt that this was an acceptable venue to be used and saw no conflict.

Issue 3: A Member's constituency assistant was a member of the local school board. Is there a possibility of a conflict of interest in her participation, with relation to the Member's position in the community?

Opinion: The Commissioner felt that membership by a constituency assistant on a local municipal board would not involve the Member in a conflict of interest. Nevertheless, where the school board in question is that of a populous area, such membership might render it advisable for the Member to refrain from voting on issues likely to involve schools in their own riding. This is <u>not,</u> however, something that is required by the wording of the *Members' Conflict of Interest Act;* but might nevertheless be considered desirable to avoid intemperate attacks on the Member by persons (whether members of the public or media) who are unfamiliar with the specific requirements of the statute.

Issue 4: A Minister was concerned that their spouse, an administrative support worker in a law firm that undertakes legal aid work, may be placing themselves in a position of conflict or perceived conflict of interest.

Opinion: The Commissioner felt that there appeared to be no reasonable likelihood that the spouse's activities would involve them in any conflict or apparent conflict of interest situation. Should the activities of the spouse or of the employer at any time involve a dispute with the government regarding legal aid funding or legal aid policy, or any other potentially sensitive activity, the Member should review his concerns with this office.

Issue 5: A Member was acquiring additional share interest in a company, which would mean the Member would have a 33% share of the company. The Member was concerned that this would in effect mean he had "control," within the meaning of the Act.

Opinion: The Commissioner forwarded a copy of the information sheet directly related to "Privately Controlled Interest - What Is Control?" (Appendix 1)

Issue 6: A Minister owned an extremely modest business which was run by their spouse. The Member wished confirmation that this would not constitute "carrying on business" as per Section 9 (1) of the Act.

Opinion: Given the facts outlined, and the very modest scope and character of the business in question, it was the Commissioner's opinion that:
(1) the Member was not in a conflict of interest position nor could a reasonably well informed person properly have a reasonable perception that his ability to exercise his official powers or perform his official duties or functions must be affected by his private interest; and

(2) as this business, such as it is, is being conducted by the spouse, and the activities are not in the Commissioner's view likely to conflict with the Member's public duties, no breach of Section 9(1)(b) arises.

Issue 7: A Minister who was very involved in a specific charity prior to election and portfolio now felt that lending their name to this charity may pose a conflict of interest. The Minister requested that their name be removed from the advertising. However, much of the advertising had been completed and posters had already been printed.

Opinion: The Commissioner felt that it would be acceptable for the event to retain its current advertising/poster material for this year. To find otherwise would, in the Commissioner's opinion, risk confusion and financial damage to a very worthwhile charitable endeavor.

Issue 8: A "development" in a Member's constituency had many constituents opposed, and they were upset: they asked for the Member's assistance. The Member discovered that the "development" was being spearheaded by a family member.

Opinion: The Commissioner felt that any issues or debates surrounding this "development" should be dealt with by a Member who represented an adjacent constituency.

Office Operations

I wish to express my appreciation to Ms. Jill Robinson and Ms. Daphne Thompson, without whom this office would not function. Ms. Robinson has been with the office since its inception 12 years ago and has proven to be a most valued colleague and infinite resource for information. Ms. Thompson has demonstrated her capacity to be a most reliable, able and diligent staff member, and I have enjoyed working with them both tremendously. Their input and assistance has been invaluable to me in my position as Commissioner.

We have added another resource to the Office of the Conflict of Interest Commissioner, in the form of Ms. Betsi Curdie who is our Senior Research Officer. Ms. Curdie is responsible for providing much of the background and assessment information on issues as they arrive within our office. Her appointment has resulted in a substantial reduction of the need for outside professional resources and the attendant cost. It has been a great pleasure to work with these colleagues in the Office of the Conflict of Interest Commissioner.

Conclusion

I would like to conclude by expressing my thanks to all Members of the House for their unfailing courtesy and cooperation. The answers which I am required to give to their inquiries may not always be precisely those which they wish to hear, but I believe that in almost every case, Members on mature reflection will regard them as honestly intended, carefully considered and ultimately correct.

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